

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA DIVISION

TENTATIVE RULINGS

EVENT DATE: 09/22/2015  
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 08:20:00 AM

DEPT.: 43

CASE NUM: 56-2014-00461060-CU-NP-VTA  
CASE TITLE: P.Q.L INC VS REVOLUTION LIGHTING TECHNOLOGIES INC

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Non-PI/PD/WD tort - Other

EVENT TYPE: Motion For Order (CLM) - designating information as Trade secrets on behalf of plt  
CAUSAL DOCUMENT/DATE FILED:

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With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you may submit a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-662-6712, stating that you submit on the tentative. Do not call in lieu of sending a telefax, nor should you call to see if your telefax has been received. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

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**The court's tentative ruling is as follows:**

Defendants' unopposed request for judicial notice of Plaintiff's 2/26/15 *ex parte* application for a Temporary Restraining Order is granted. Defendants' Application to File Records Under Seal is granted. The Reply evidence submitted by Plaintiffs is not considered.

The Motion is denied because Plaintiff has not met its burden of establishing the applicability of its "trade secret" designations. Invite the parties to stipulate that the financial documents themselves, i.e, 112, 115-119, 125-128, 142-159, 163-174, 185-190, and 193-203, are "confidential."

**Discussion:**

The Court will not consider the Reply declarations of Sreden or Catanese because Ds have not had the chance to respond. "The general rule of motion practice [...] is that new evidence is not permitted with reply papers." *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-38. As for the merits of the Motion, the language of the Protective Order entered by the Court on 5/13/15, section 2 allows the parties to designate "confidential" or "trade secret" information, after a "good faith" determination that the information is confidential or meets the definition of "trade secret" in Civil Code §3426.1(d). Section 2(B), specifically referencing trade secret information, states that "Blanket designation of documents of information [...] en mass without regard to the specific contents of each document or piece of information, is prohibited." Pursuant to Section 9:

Any party may, at any time, challenge the designation of any material as [...] "TRADE SECRET" by notifying the designating party in writing. To preserve its [...] "TRADE SECRET" designation, the designating party within twenty (20) business days after receipt of any such notice, must apply to the Court for a ruling that the material objected to shall be treated as Designated Information and notice of such application shall be provided to all other parties. The designating party shall have the burden of establishing the applicability of its [...] TRADE SECRET designation.

On 7/27/15, P produced 205 documents in response to Revolution Lighting Technologies, Inc's document production and designated **all of them** as a "trade secret." As noted in Section 2, blanket designation is inappropriate. P did not

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attempt to justify designation of the documents with regard to the contents of the specific documents at the time of designation. The Motion makes some effort but it does not refer to every document objected to. In fact, the declarations group all the documents together and conclusory state that all of the challenged documents contain information obtained by P's specialized knowledge gained over years. That is not enough specificity to meet its burden of proof.

Taking into consideration the documents that Plaintiff is withdrawing, the documents which Defendants are actually contesting the Trade Secret designation are the following: 11-12, 19-22, 28-34, 40-42, 48-49, 52-53, 56-64, 83-85, 104, 109-119, 124-129, 138-181, 184-190, 193-203. The following were not addressed by P in the Motion or in the Reply: 33-34, 40-42, 49, 56-64, 83-85, 109-111, 180-181. Accordingly, P's burden of showing that the applicability of the designation has not been met as to those documents and the Motion is denied as to each of them.

A "trade secret" has four elements under the Uniform Trade Secrets Act (UTSA, CC §3426 et seq.):

- - it must be comprised of "information";
- - it must not be "generally known";
- - it must derive "independent economic value" from the fact that it is a secret; and
- - it must be the subject of "reasonable" efforts to "maintain its secrecy." [Civ.C. § 3426.1(d)]

As stated in *Altavion, Inc. v. Konica Minolta Systems Laboratory Inc.* (2014) 226 Cal.App.4th 26, 62:

To be protectable as a trade secret, the information at issue must "[d]erive[ ] independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use." (§ 3426.1, subd. (d)(1).) In other words, the information alleged to be a trade secret "is valuable because it is unknown to others." (*DVD Copy Control Assn. v. Bunner* (2004) 116 Cal.App.4th 241, 251, 10 Cal.Rptr.3d 185.) Thus, the focus of the inquiry regarding the independent economic value element is "on whether the information is generally known to or readily ascertainable by business competitors or others to whom the information would have some economic value. [Citations.] Information that is readily ascertainable by a business competitor derives no independent value from not being generally known. [Citation.]"

The Court will address each of the remaining contested bates-stamped documents:

**11-12, & 19** – Per *Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1454-55, the email between Delgado and Tony Broude (a representative of third-party Centercal Properties, LLC) and the attachments, cannot be a trade secret because the information was disclosed to a customer not bound by a secrecy agreement (at least there is no information before the Court). Any information disclosed to customers or potential customers, who were/are not bound by any secrecy agreement, cannot be treated as trade secret. There cannot be said to be an effort to maintain the price quotes secrecy when they are emailed to customers under no obligation to keep them secret. Also, whether specialized pricing or unique price quotes were provided in order to create the attachments does not threaten the secrecy of the CRM program. P has not met its burden.

**20** – Same *Whyte* analysis regarding the emailed drafted by Warnes for Delgado to send to Jori Gohsman at Batteries Plus, while Warnes and Delgado worked at Tri-State LED. In addition, there is no information in the email regarding PQL. P has not met its burden.

**21-22** – The product sheet, like the one publically available on P's website, *appears* intended for public use. Furthermore, there is no evidence that employees were told that the product sheet was confidential or secret. P has not met its burden.

**28-30** – P has failed to show that the emails with Essex Property Trust contain any trade secret information. P failed in its burden.

**31-32** – The emails from Warnes while employed at Tri-State contain no information related to P.

**48** – *Whyte* analysis applies to the price quote from P to John Menicucci of Morrow-Meadows Corporation. There is no evidence that Menicucci was under any secrecy obligation.

**52-53** - *Whyte* analysis applies to the email to Rosewood Hotels regarding an energy audit. No evidence Rosewood was under any obligation to protect or that there was any independent value.

**54-55** – Although P addresses them in the Motion and Reply, Ds have not challenged the trade secret designation.

**104-105** – There is simply no evidence that the Organizational Chart contains independent economic value from not being publically known. The information contains the names and titles of P's employees. There is no evidence that the employees or their supervisors' names are secret. Even considering the Reply declaration, Sreden does not claim that there were any efforts made to maintain the Organizational Chart's secrecy. There is nothing unique, as far as I can tell, about the structure of PQL. A "sales team structure and oversight by management" cannot said to be unique or secret. The burden was not met.

**113-115, 129, 138-141, 160-162, 175, 178-179, & 184.** Nothing in these documents meets the definition of trade secret. Where is the economic value of the emails independent of the attachments? P has not met its burden.

**176-177** were not discussed by Ds in their Joint Opposition. There is no evidence of the documents' independent value to a competitor.

**112, 115-119, 125-128, 142-159, 163-174, 185-190, and 193-203** – P has not shown how these documents are a trade secret as opposed to confidential information. The non-disclosure agreement entered into between RVLT and P (provided only in the Reply), only states that certain information is "proprietary or confidential."

As to P's financial information, Ds note that they previously proposed that all of these documents be designated as "confidential" because P's financial information is not valuable to others, but only to itself. There is no advantage to competitors knowing how much P spent on utilities, telephone expenses, or rental car expenses. The information should at least be designated confidential. The Court invites the parties to stipulate to that fact.